

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

AMERICAN TRAIN DISPATCHERS,)
DEPARTMENT OF INTERNATIONAL)
BROTHERHOOD OF LOCOMOTIVE)
ENGINEERS, ET AL.,)

PLAINTIFFS)

v.)

CIVIL No. 95-258-P-H

BOSTON AND MAINE CORPORATION)
AND SPRINGFIELD TERMINAL)
RAILWAY COMPANY,)

DEFENDANTS)

BOSTON AND MAINE CORPORATION)
AND SPRINGFIELD TERMINAL)
RAILWAY COMPANY,)

PLAINTIFFS)

v.)

CIVIL No. 95-372-P-H

UNITED STATES OF AMERICA AND)
INTERSTATE COMMERCE)
COMMISSION,)

DEFENDANTS)

ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT

These consolidated cases concern the enforceability of decisions by the Interstate Commerce Commission ("ICC"), which has since been abolished and succeeded by a new Surface

Transportation Board (“Board”). See 49 U.S.C. § 701.¹ The Railroad Carriers seek to upset the rulings; the Union and the Board seek to sustain them. Because the ICC has explained the basis for its decisions, and because my decision will be subject to *de novo* review in the court of appeals without any deference to my reasoning or conclusions, I will set forth only briefly the reasons why I sustain the ICC’s decisions.

The dispute arises out of Guilford Transportation Industries, Inc.’s (“Guilford”) restructuring of its operations and subsidiaries. Guilford abolished all the Boston and Maine Corporation (“B&M”) dispatcher positions. It then offered former B&M dispatchers employment as train operations managers at Springfield Terminal Railway Company (“Springfield Terminal”).

The applicable statute requires that such a reorganization provide a “fair arrangement” for affected employees. 49 U.S.C. § 11326 (formerly § 11347). The ICC has interpreted this to mean that employees whose positions are consequently abolished are entitled to a separation allowance unless they refuse the offer of a “comparable position” without good cause. Norfolk and Western Ry.—Trackage Rights—BN, 354 I.C.C. 605, 610 App., Art. I, § 6(d), as incorporated and modified by Mendocino Coast Ry.—Lease and Operate—Cal. Western R.R., 354 I.C.C. 732 (1978) [hereinafter “Mendocino Coast conditions”], modified, 360 I.C.C. 653 (1980), aff’d sub nom., Railway Labor Executives Ass’n v. United States, 675 F.2d 1248 (D.C. Cir. 1982). Here, four former B&M dispatchers have objected to the Springfield Terminal train operations manager positions they were offered, claiming that these positions were not “comparable.” The dispute was submitted to arbitration, as required by the ICC. Mendocino Coast conditions, Art. I, § 11. The arbitrators found that the new positions were comparable in terms of “skill and responsibility,” but

¹ As required by the ICC Termination Act of 1995, the Board has been substituted for the ICC as a party in these proceedings. Pub. L. No. 104-88, 109 Stat. 803, § 204(c)(1) and (2).

that they were not otherwise comparable because they lacked contractual protection against arbitrary demotion or termination (the B&M positions were subject to a collective bargaining agreement that provided such protection), and because the procedures for sick leave, vacation selection and shift assignment were different. The ICC affirmed and also awarded interest to the employees. The Union has filed suit in this court to enforce the awards and the Carriers to upset them. Three primary issues are presented by cross-motions for summary judgment: (1) Are the positions comparable?; (2) Has the statute of limitations run?; and (3) Did the ICC properly award post-judgment interest?

1. “COMPARABLE POSITIONS”

The appropriate standard of review is an interesting issue in this case, where arbitration is required by the ICC rather than the consequence of a voluntary agreement,² and where it is a device used by an administrative agency otherwise subject to the Administrative Procedure Act and that agency in turn defers to the arbitrators. Because I would affirm the ICC’s decision under any standard of review, however, it is unnecessary to address these issues. The arbitrators’ (and the ICC’s) decision on the noncomparability of the discharge provisions is clearly correct under any standard. The new Springfield Terminal positions provide no protection against arbitrary discharge. By contrast, the collective bargaining agreement that governed the B&M positions provided for notice and a “fair hearing” prior to disciplinary actions. The Carriers argue that even though their arrangements at Springfield Terminal may be deficient, the ICC itself has provided comparable protection through its precedents (specifically the Mendocino Coast conditions referred to above) that give relief when a discharge results from the reorganization. The Carriers argue that if one of

² The arbitral award refers to mutual agreement, but under the Mendocino Coast conditions, if one party elects it, arbitration becomes mandatory. Art. I, § 11.

these employees was arbitrarily dismissed by Springfield Terminal, he “would inherently have established that he lost his job as a result of the lease transaction.” Defs.’ Reply Mem. in Supp. of Mot. for Summ. J. and in Opp’n to Pls.’ Mot. for Summ. J. at 11. That simply is not so. The lack of protection, not the discharge itself, results from the lease transaction. I conclude that job security is not comparable, whatever standard of review or deference is applied to the ICC’s decision.³

The Carriers also argue that selection of this ground for decision is contrary to prior arbitral precedent because it goes beyond the issues of skill and responsibility. Whether or not that is correct (the Union and Board assert that it is not), the ICC has explicitly addressed the issue of whether the comparability test should be limited to skill and responsibility in this very decision and has concluded that it should not. On that issue, I do defer to the ICC’s decision. The Board’s own prior precedents do not preclude that result and that is the end of the matter. See International Bhd. of Elec. Workers v. ICC, 862 F.2d 330, 338-39 (D.C. Cir. 1988) (applying arbitrary and capricious standard of review to changes in agency policy). To the extent that the ICC decision is a departure from past policy, it “has been adequately explained and justified so that the parties upon whom the policy will have an impact understand the newly adopted agency position.” Id. at 339.

2. STATUTE OF LIMITATIONS

The parties disagree over whether the one-year statute of limitation applies. See 49 U.S.C. § 11705(e) (formerly § 11706(e)). Under even the one-year statute of limitations, however, the Union filed this lawsuit on August 17, 1995, soon enough after the final ICC decision on August 30,

³ The arbitrators’/ICC’s treatment of sick leave, vacation selection and shift assignment is a closer question. It is not apparent why these provisions were not considered “comparable” (though certainly not identical), particularly with the addition of a new benefit, a pension plan.

1994. The Carriers having appealed the arbitrators' earlier award, this court would not have entertained an enforcement suit until the ICC's decision was final. See 5 U.S.C. § 704.⁴

3. INTEREST

The ICC awarded interest to these employees on their severance allowances, commencing on the effective date of the arbitrators' decision. Clearly, this was within the ICC's power. See § 11327 (formerly § 11351) (supplemental orders may enter at any time upon a showing of cause). There has been extensive delay in paying the amounts due because of the appeals. The ICC was not required to send the matter back to an arbitrator to make the initial interest award but was entitled to make the award itself, once the delay was brought to its attention. The arbitrators had ordered the Carriers to comply with the award within thirty days, and the Carriers had not exercised their right to seek a stay under 49 C.F.R. §§ 1115.8, 1115.5. See Union Pac. Corp., Union Pac. R.R. and Mo. Pac. R.R., STB Finance Docket No. 32133 (Sub-No. 4) (STB Apr. 3, 1996) (Implementation of

⁴ With respect to one employee, David Margeson, the Carriers make a separate argument that the statute of limitations has run. Specifically, they contend that they never appealed that part of the arbitration award that related to Mr. Margeson, and that therefore the award as to him became final and enforceable on March 14, 1993, and the statute of limitations started to run on that date. None of the parties have pointed to any document in the record that is equivalent to a notice of appeal and that might thereby firmly establish on whose behalf the appeal was taken. The Union has cited to the "Appeal of Boston & Maine Corporation and Springfield Terminal Railway Company from Award in the Matter of the Arbitration Between American Train Dispatchers Association and Boston & Maine Corporation, Springfield Terminal Railway Company and Memorandum in Support Thereof" dated March 24, 1993, the legal memorandum submitted by the Carriers in appealing the arbitrators' decision to the ICC. That document requests a review and reversal of the arbitrators' award generally and discusses the arbitrators' treatment of all four employees including Mr. Margeson. See, e.g., p. 7. Although the Union argued to the ICC that the Carriers had no basis for challenging the award to Mr. Margeson, the Carriers' legal document I have just referred to certainly appears to challenge the entire award including Margeson's portion. I conclude, therefore, that, even as to Mr. Margeson, the ICC's decision was not final until August 30, 1994, and that the statute of limitations has not run against David Margeson.

arbitration awards “typically occur before final decisions are rendered on the merits of arbitration appeals.”). The ICC, therefore, had sufficient “cause” to issue a supplemental order for post-judgment interest to avoid injustice to the plaintiffs. See Illinois v. ICC, 713 F.2d 305, 310 (7th Cir. 1983).

For all these reasons, summary judgment is entered against the Carriers B&M and Springfield Terminal and in favor of the Board and the Union.

SO ORDERED.

DATED THIS 25TH DAY OF APRIL, 1996.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE